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THE HONORABLE ROSANNA MALOUF PETERSON
NOVEMBER 4, 2018, 6:30 P.M.
WITHOUT ORAL ARGUMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOSHUA BRENT STULLER,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CHELAN COUNTY, WASHINGTON;
BILL LARSEN, in his official capacity as
Interim Director of the Chelan County
Regional Justice Center; LESLIE
CARLSON, in her official capacity as the
Chelan County Regional Justice Center
Mental Health Manager, and their officers,
agents, employees, and successors,

Defendants.

NO. 2:18-cv-00178-RMP

**DEFENDANTS' MOTION FOR
DETERMINATION BY THE
COURT APPOINTING GUARDIAN
AD LITEM**

I. INTRODUCTION

On September 4, 2018, the Court conducted a Telephonic Scheduling Conference with the attorneys for the respective parties. During the Conference, the Defendants' advised the Court of their concern that based on the allegations in Plaintiff's Amended Complaint for Damages, as well as concerns over the Plaintiff's mental health condition and potential threat to others, whether a Guardian ad Litem should be appointed. The Court also expressed a level of concern that because the Plaintiff takes psychotropic medications for his mental illness issues, there should be a discussion as to an appointment of a GAL. The attorney representing the Plaintiff is of the opinion that no GAL is required in this case. (ECF NO. 11).

At this early juncture of the proceedings, the Defendants do not have access to Stuller's current mental health records, alcohol treatment records, or other counseling or medical reports regarding his ability to act on his own behalf in this case. Accordingly, the Court is respectfully requested to order that the Plaintiff provide evidence and documentation to the Court sufficient to allow the Court to make a determination whether pursuant to FRCP 17(c) a Guardian ad Litem should be appointed to act on his behalf in this matter.

II. STATEMENT OF FACTS

On October 26, 2016, the Chelan County Prosecuting Attorney filed a Second Amended Information charging Joshua B. Stuller with five Counts of Felony Harassment. (See Declaration of Patrick McMahon Exhibit No. 1).

The criminal charges stem from an alarming report made to the Wenatchee Police Department by Stuller's family, that he had a history of suicidal thoughts as well as paranoid schizophrenia. (See Exhibit No. 2 to the Declaration of Patrick McMahon – Affidavit for Search Warrant). The family's concern resulted in Stuller's step-father, Lance Leming, searching a pool house residence where Stuller was currently residing. The step-father discovered a shotgun along with ammunition, multiple empty bottles of Vodka, as well as a loaded hand gun. *Id.*

The investigating Detective who filed the Search Warrant Affidavit, discovered numerous items leading to his assessment that Stuller had authored papers indicating that he was going to murder numerous employees of Herring & Associates, a property management company located in Wenatchee, Washington. *Id.* These alarming findings of weapons and essentially a "Manifesto" for murder were the basis for the stepfather to contact law enforcement authorities ultimately resulting in the criminal charges being filed against Stuller who is in the Plaintiff in the case at bar.

1 During the pendency of Stuller's criminal case, he was ultimately referred by
2 his attorneys, Tim Leary, and Keith Howard, for an evaluation to be conducted by
3 Dr. Kenneth Muscatel, Ph.D., a psychologist specializing in Clinical Forensic and
4 Neuropsychological matters. (See Declaration of Patrick McMahon Exhibit No. 3).
5 (Dr. Muscatel's Report dated October 10, 2016 is filed under seal with the Court).
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8 Subsequently, on October 28, 2016, a Judgment and Order for Acquittal by
9 Reason of Insanity was entered in Chelan County Superior Court. (See Declaration
10 of Patrick McMahon Exhibit No. 4). The Court reviewed Dr. Muscatel's Report as
11 part of entry of the Judgment. *Id.* Mr. Stuller was found to be "... a substantial
12 danger to himself or others or presents a substantial likelihood of committing
13 felonious acts, jeopardizing the public safety or security based upon a mental
14 disease or defect and is in need of control by the Court or other persons or
15 institutions, and therefore is hereby committed to the custody of the Secretary of the
16 Department of Social and Health Services at Eastern State Hospital, pursuant to
17 RCW 10.77 for medical and psychiatric treatment as directed by the Department of
18 Social and Health Services, and that the Sheriff of Chelan County, Washington, is
19 hereby ordered to deliver Defendant to the custody of the Superintendent of Eastern
20 State Hospital ..."
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23 Ultimately, Stuller was granted a Conditional Release from Eastern State
24 Hospital with a detailed Order setting forth the terms and conditions of such release
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1 and requirements for treatment. (See Declaration of Patrick of McMahon Exhibit
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3 No. 5).

4 **III. ANALYSIS**

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6 There is a question that the Plaintiff presents concerns of seriously harming
7 others, including himself, as a result of his mental illness and substance abuse
8 problems. Moreover, the parties and the Court need to be assured that Plaintiff
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10 Stuller does not represent a danger to other persons and committing crimes
11 jeopardizing possible safety and security. The Court and parties need to be
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13 assured that Mr. Stuller is not simply one moment or step away from relapsing
14 and sinking back into mental health problems where he needs the assistance of an
15 independent Guardian to assist in the litigation process, including an
16 understanding of ADR considerations.
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19 Further, there is a legitimate issue and it is in the best interest for all
20 concerned that the Court determines Stuller's competency now, so as to avoid
21 there being a question once the case is dismissed or a defense verdict is obtained,
22 that Stuller should have been appointed a GAL. The parties and the Court would
23
24 then be in the undesirable situation of re-litigating this case in its entirety.
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27 Mr. Stuller's present attorney is adamant that no GAL is necessary or
28 required. However, with all due respect, he is an advocate for Stuller's full
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1 unconditional release without any level of legal oversight and accountability for
2 the general public; Mr. Stuller's targeted victims; as well as for Stuller himself.
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4 Because the Plaintiff had a significant history of mental illness, substance
5 abuse, and threats to do serious bodily harm to third persons, and is believed to be
6 taking medications for his mental health issues and is currently under a
7 conditional release monitored by Eastern State Hospital, the Court is respectfully
8 requested to order that Plaintiff provide evidence that he is competent to represent
9 his interests in the present litigation and ultimately determine whether a Guardian
10 ad Litem is required pursuant to Court Rule.
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14 Alternatively, the Court may consider that any reports regarding Stuller's
15 progress and his conditional release be presented to the Court as well as defense
16 counsel, and the issue of a GAL or Temporary GAL can be revisited subsequent
17 to analysis of the reports and as the case progresses.
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22 **IV. CONCLUSION**

23 This Court is respectfully requested to determine whether Plaintiff Joshua
24 Stuller should have the assistance of a Guardian during the pendency of this civil
25 litigation. Based on Mr. Stuller's significant mental health issues, substance
26 abuse issues, and threats to seriously harm and injure third-parties, the Plaintiff
27 should provide sufficient evidence to the Court that he is competent in this case to
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1 avoid there being a question once the case is dismissed or a defense verdict is
2 obtained that Stuller needed or should have been appointed a GAL. The parties
3 and the Court would then be in the undesirable situation of re-litigating this
4 matter again.
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9 RESPECTFULLY SUBMITTED THIS 4TH day of OCTOBER, 2018.

10 CARLSON & McMAHON, PLLC

11
12 By /s/ Patrick McMahon
13 PATRICK MCMAHON, WSBA #18809
14 Attorney for Defendants

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21 WCRP05-02450\PLE Federal\MOTION FOR DETERMINATION-100418
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CERTIFICATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on October 4, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Washington using the CM/ECF system which will send notification of such filing to:

Andrew S. Biviano abiviano@pt-law.com

Breean L. Beggs bbeggs@pt-law.com

Mary Elizabeth Dillon bdillon@pt-law.com

And I certify that I have mailed by United States Postal Service the foregoing to the following non CM/ECF participants:

Signed at Wenatchee, Washington on OCTOBER 4, 2018.

/s/ Patrick McMahon
PATRICK MCMAHON, WSBA #18809